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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition Act
of 1992

MM Docket No. 92-259

Broadcast Signal Carriage Issues

**FURTHER SUPPLEMENT TO PETITION FOR EMERGENCY RECONSIDERATION
AND REQUEST FOR MODIFICATION OF RULES OF YANKEE MICROWAVE, INC.**

On May 3, 1993, Yankee Microwave, Inc. ("Yankee"), by its attorneys, filed a "Petition For Emergency Reconsideration And Request For Modification Of Rules" (hereinafter "Petition For Reconsideration") in the above-referenced proceeding. That Petition was supplemented on May 6, 1993, and again on June 14, 1993. Since Yankee's last supplement, additional facts have come to light which bear consideration in connection with Yankee's Petition For Reconsideration.

In its Petition for Reconsideration, Yankee challenged one aspect of the Commission's retransmission consent rules -- specifically the so-called "superstation exemption" which exempts from retransmission consent superstation signals obtained from a satellite carrier, but not from other distributors such as microwave carriers or cable TV-owned CARS systems.¹ Yankee argued that an unintended impact of the Rule would be to unfairly

¹ See 47 C.F.R. § 76.64(b)(2).

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discriminate in favor of satellite carriers over microwave or other signal delivery means and entities.

In its Order of May 26, 1993 in MM Docket No. 92-259 (____ FCC Rcd ____ (1993), FCC No. 93-278, released May 27, 1993), the Commission denied Yankee's requested temporary stay of the effective date of its Rules, which was filed concurrently with the petition for reconsideration.² Therein, the Commission stated that "the evidence provided by Yankee regarding the extent to which signals will be delivered by satellite instead of microwave is speculative, and it is unclear whether cable systems will actually change the delivery system used to receive [superstations]."

This supplement provides the Commission with a recently received letter from Helicon, owner of a small cable company serving St. Johnsbury, Vermont, which receives delivery of distant superstation WSBK from Yankee. (Thus, there is no must-carry option for Helicon). This letter corroborates statements made in Yankee's June 14, 1993 supplement concerning Helicon's intention to discontinue receipt of the Yankee feed for WSBK unless free retransmission consent can be provided for WSBK. Letters have already been supplied to the Commission from A-R

² Through its stay request Yankee sought protection from the deleterious effects of the Retransmission Consent Rule until the Commission could rule on Yankee's pending Petition for Reconsideration. A petition for Reconsideration of The Commission's denial of Yankee's stay request was filed on June 14, 1993.

Cable, State Cable TV, Better Cable TV, and Casco Cable TV, memorializing their similar intentions to switch carriage of superstation WSBK-TV from Yankee to a satellite feed. The reality of business planning dictates that decisions of this kind are not made on the eve of the effective date of a new Rule -- such must and will be made well in advance of October 6, 1993.

To date Yankee has received written or verbal notification of impending termination from twelve of the fourteen systems to which it provides microwave delivery of superstation WSBK. Loss of these customers will jeopardize the very existence of Yankee, a common carrier serving some of these customers for more than twenty years. These developments demonstrate the immediate and imminent danger faced by Yankee as a result of the disparate treatment afforded under the new Rule, and further underscore the necessity of immediate action on the part of the Commission to modify the discriminatory language of the "superstation exemption." If the Commission fails to act swiftly to stay the effective date of the "superstation exemption" and modify the exemption to treat satellite and microwave carriers equally, it will ensure the demise of the remaining microwave carriers which compete with satellite.

For the reasons set forth herein and in Yankee's Petition For Reconsideration and subsequent supplements, the language of the "superstation exemption" rule must be stayed and the language modified to permit microwave carriers to continue to compete on

an aerial section with satellite for the delivery of day rest



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June 11, 1993

Mr. Bernard K. Karlen
Yankee Microwave, Inc.
31 Ward Drive
New Rochelle, NY 10804

Dear Mr. Karlen:

Unfortunately if our small system of St. Johnsbury, Vermont, with 4,300 subscribers does not receive Retransmission Consent from WSBK-TV, we will then be forced to take our signal for WSBK-TV from the Eastern Microwave satellite feed for which we require no Retransmission Consent.

The substitutuion of the satellite signal for the same signal now being delivered by Yankee Microwave will be a considerable additional expense. which. regretfully, we